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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY JOHNSON, JENNIFER RIESE,
SHAUN SIMMONS, and JEFFREY
KOSSICK, individually, and on behalf of
others similarly situated,

Plaintiffs,

vs.

HEWLETT-PACKARD COMPANY and
DOES 1-25 inclusive,

Defendant.

Case No. C-09-03596 CRB

**STIPULATION OF
CONFIDENTIALITY AND
[PROPOSED] PROTECTIVE ORDER**

1 Plaintiffs Jeffrey Johnson, Jennifer Riese, Shaun Simmons and Jeffrey Kossick
 2 (“Plaintiffs”) and Defendant Hewlett-Packard Company (“Defendant”), through their respective
 3 counsel, seek this Court’s approval of this Stipulation of Confidentiality and Protective Order.

4 WHEREAS, pretrial discovery in *Jeffrey Johnson et al. v. Hewlett-Packard Company*,
 5 Case No. C-09-03596 CRB) (the “Action”), may require disclosure of confidential information
 6 and documents, including proprietary material, company confidential, trade secret, personnel
 7 information, or other confidential information (the “Confidential Materials”); and

8 WHEREAS, Plaintiffs and Defendant (collectively the “Parties”) desire to maintain the
 9 confidentiality of the Confidential Materials.

10 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the Parties to this
 11 Action, through their respective counsel, as follows:

12 CONFIDENTIAL MATERIALS

13 1. Each Party to this Action who, in response to a discovery request, or by way of
 14 voluntary disclosure, produces or discloses (the “Disclosing Party”) any matter, including
 15 documents, things, testimony or information which such Party reasonably and in good faith
 16 believes to comprise or contain Confidential Materials may designate the same
 17 “CONFIDENTIAL.” Neither party shall designate any discovery materials as
 18 “CONFIDENTIAL” without first making a determination that the information is properly subject
 19 to protection under Fed. R. Civ. P. 26(c) and that such protection is warranted in good faith.

20 2. The Disclosing Party shall designate as “CONFIDENTIAL” only information that
 21 the Disclosing Party in good faith believes is confidential, that normally would not be revealed to
 22 third parties, and that is maintained in confidence.

23 3. All information designated as “CONFIDENTIAL” by the Disclosing Party shall
 24 not be disclosed by any of the other Parties to any person or entity other than those persons
 25 designated herein and, in any event, shall not be used for any purpose other than in connection
 26 with the Action. Such information may be disclosed only to the following:

- 27 a. The Court (subject to provisions for filing under seal, set out below);
- 28 b. Counsel of record for any Party, including their associates, paralegals, and clerical

1 personnel;

2 c. The Parties, including employees and agents of the Parties;

3 d. A current or former officer, director, agent, registered representative or employee
4 of a Party deemed necessary by counsel to aid in the prosecution, defense or settlement of this
5 Action;

6 e. Persons retained or consulted by the Parties or their attorneys for purposes of this
7 litigation (including, but not limited to, accountants, marketing consultants, financial advisors,
8 statisticians and economists), if such persons reasonably require the information to enable them to
9 assist counsel in the prosecution or defense of this litigation, provided that no such disclosure
10 shall be made to any person employed by any competitor of Defendant, except upon further order
11 of the Court;

12 f. Any court reporter who takes testimony;

13 g. A non expert witness or potential witness at or for any deposition or other
14 proceeding in this Action; and

15 h. Any other person as to whom the Parties agree in writing.

16 To the extent counsel or any of their expert consultants, witnesses, or potential witnesses prepare
17 summaries of "CONFIDENTIAL" materials, or cause such summaries to be prepared, such
18 summaries shall be subject to the terms of this Protective Order.

19 4. No disclosure of materials designated as "CONFIDENTIAL" by any Disclosing
20 Party may be made to any person pursuant to the terms of paragraphs 3(d), 3(e), 3(g) or 3(h)
21 unless that person first executes an agreement to be bound by the terms of this Order in the form
22 attached hereto as **Exhibit A**. This Order shall be binding upon the Parties (including all
23 employees and agents of the Parties), counsel for any Party (including their associates, paralegals,
24 and clerical personnel), and all persons who, pursuant to the preceding sentence, have executed an
25 agreement to be bound by the terms of this Order. No person or entity upon whom this Order is
26 binding shall use materials designated as "CONFIDENTIAL" for any purpose other than in
27 connection with the Action. If a witness at a deposition refuses to sign **Exhibit A**, the Parties
28 shall meet and confer with each other and, if necessary, submit the issue to the Court prior to the

1 disclosure to the witness of any “CONFIDENTIAL” document.

2 5. Counsel shall keep a record of all copies of each “CONFIDENTIAL” document
3 distributed, in whole or in part, to any qualified person. Any copy so distributed shall be returned
4 to the distributing counsel after the completion of the qualified person’s consultation or
5 participation in this action.

6 6. With respect to documents which the Disclosing Party reasonably believes contain
7 Confidential Materials, the Disclosing Party shall either stamp such documents
8 “CONFIDENTIAL” before the time of production or when photocopied and delivered or
9 designate categories of documents in container(s) marked “CONFIDENTIAL” and provide a
10 description of the designated categories of documents in the container(s). Such documents will
11 also bear a Bates stamp number, or some other mutually agreeable identifying number.

12 7. To the extent Confidential Materials or information obtained therefrom are used in
13 the taking of depositions, such documents or information shall remain subject to the provisions of
14 this Protective Order. On the record at a deposition, a Party may designate as
15 “CONFIDENTIAL” the testimony which it reasonably believes discloses Confidential Materials.
16 The Designating Party shall be responsible to instruct the court reporter to segregate confidential
17 from non confidential testimony and exhibits in separate transcripts. Confidential portions of
18 deposition transcripts shall be treated in the same manner as any other “document” described in
19 this Order.

20 8. Nothing in this Protective Order shall prevent any Party from disclosing its own
21 Confidential Materials as it deems appropriate. Such disclosure shall not constitute a waiver of
22 the designation of such confidential materials as “CONFIDENTIAL.”

23 9. If any Party objects to the designation of any materials as “CONFIDENTIAL,”
24 that Party shall state the objection by letter to counsel for the Party making the designation. Each
25 Party shall have the right, on reasonable notice, and after meeting and conferring with the
26 Designating Party in a good faith effort to resolve the matter informally, to apply to the Court for
27 a determination of the issue. Until the Court rules on the motion, the materials shall continue to
28 be treated and designated as “CONFIDENTIAL.” The burden of establishing that any

1 information designated as “CONFIDENTIAL” meets the definition set forth herein shall be on
2 the Party which seeks to uphold the designation.

3 10. Any Party seeking to file Confidential Materials under seal with the Court must
4 first allow the designating part a reasonable opportunity to obtain an order from the Court,
5 pursuant to Civil Local Rule 79-5, authorizing the sealing of the particular documents, or portions
6 thereof. Once the Party seeking to file Confidential Materials with the Court under seal has
7 obtained an order from the Court authorizing the sealing of the particular documents, or portions
8 thereof, the Party may then file Confidential Materials with the Court in sealed envelopes or other
9 appropriate sealed containers on which shall be endorsed the title of the action to which it
10 pertains, an indication of the nature of the contents of the sealed envelope or other container, the
11 word “CONFIDENTIAL,” and a statement substantially in the following form:

12 This envelope is sealed pursuant to Order of the Court entered [date of this
13 Order], contains confidential information, and is not to be opened or the
14 contents revealed except by order of the Court.

15 If the Court denies the application, the Party wishing to file the Confidential Materials is
16 free to do so in the normal course and not under seal regardless of the terms of this Protective
17 Order.

18 11. Any court hearing which refers to or describes confidential information may, in the
19 Court’s discretion, be *in camera*.

20 12. If a Party in possession of materials designated as “CONFIDENTIAL” receives a
21 subpoena from a non party to this Protective Order which seeks production or other disclosure of
22 Confidential Materials, it or he shall immediately give written notice to counsel for the Party who
23 designated the materials as “CONFIDENTIAL” stating the materials sought and enclosing a copy
24 of the subpoena. Where possible, at least 10 days’ notice before production or other disclosure
25 should be provided. In no event shall production or disclosure be made before telephonic notice
26 is given and, whenever possible, sufficiently in advance of production or disclosure to afford the
27 Party to whom such notice has been given at least three business days to take appropriate action,
28 including seeking judicial relief.

1 13. Upon final resolution of this Action, including appeals, all Parties and persons to
 2 whom any Confidential Materials have been disclosed or provided shall either destroy all such
 3 Confidential Materials or return them to the Disclosing Party; provided, however, that this
 4 obligation shall not extend to any Confidential Materials included in conformed copies of
 5 materials filed with the Court. The Parties further agree that their obligations under this
 6 Protective Order will not terminate upon final resolution of this Action, and that this Protective
 7 Order will remain in effect in perpetuity.

8 14. Neither the taking of any action in accordance with the provisions of this
 9 Protective Order, nor the failure to object thereto, shall be construed as a waiver of any claim or
 10 defense in this Action. The entry of this Order shall not be construed as a waiver of any right to
 11 object on any other grounds to the furnishing of information in response to discovery and, except
 12 as expressly provided, shall not relieve any Party of the obligation to produce information in the
 13 course of discovery.

14 15. This Protective Order shall not prevent any Party from applying to the Court for
 15 relief therefrom, or from applying to the Court for further or additional protective orders, or from
 16 agreeing to modify this Protective Order, subject to the approval of the Court.

17 16. This Protective Order shall not control the use of any evidence during the trial of
 18 this Action. However, nothing herein shall preclude any Party from seeking the assistance of the
 19 Court in maintaining the confidential nature of any evidence which is presented at trial.

20 17. After the date of the Protective Order, if a Party inadvertently produces or provides
 21 discovery of any Confidential Materials without designating them as such, the Disclosing Party
 22 may give written notice to the Party or Parties that have received the Confidential Materials that
 23 the document(s), information, response, testimony, or other discovery are Confidential Materials
 24 and should be treated as confidential in accordance with the provisions of this Order. The Party
 25 or Parties that have received the materials must treat the materials as confidential from the date
 26 such notice is received. The inadvertent disclosure of any confidential document or information
 27 shall not be deemed a waiver of confidentiality as to any other document in which such
 28 information may be contained.

18. The Parties, and any other person subject to the terms of this Order, agree that after this Action is terminated this Court shall have and retain jurisdiction over him, her, or it for the purpose of enforcing this Order for ninety (90) days following the termination of this Action.

19. The Court may modify the Protective Order in the interests of justice or public policy.

Dated: May 3, 2010

MORGAN, LEWIS & BOCKIUS LLP

By /s/ Barbara Antonucci
Barbara Antonucci
Attorneys for Defendant
Hewlett-Packard Company

Dated: May 3, 2010

SCHNEIDER WALLACE COTTRELL
BRAYTON KONECKY

By /s/ Lisa M. Bowman
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Jennifer Riese, Shaun Simmons and Jeffrey
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Dated: May 3, 2010

FRANKLIN D. AZAR & ASSOCIATES, P.C.

By /s/ Franklin D. Azar
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Dated: May 3, 2010

GRADY SCHNEIDER, LLP

By /s/ Peter B. Schneider
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Jennifer Riese, Shaun Simmons and Jeffrey
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IT IS SO ORDERED.

Dated: _____

Hon. Charles R. Breyer
United States District Judge

EXHIBIT AWRITTEN ASSURANCE OF CONFIDENTIALITY

I, _____, have read and fully understand the “Stipulation of Confidentiality and Protective Order” in *Jeffrey Johnson et al. v. Hewlett-Packard Company*, Case No. C-09-03596 CRB) (the “Protective Order”). I agree to comply with and be bound by the Protective Order. I agree that I will not disclose any Confidential Materials, as defined in the Protective Order, to any persons or in any manner not specifically authorized by the Protective Order, and I agree that I will not copy, use or disclose any Confidential Materials except solely in connection with the case referenced above.

I declare under penalty of perjury of the laws of the United States and the State of California that the foregoing is true and correct and that this Declaration was executed at _____, _____, on _____, 20__.

Signed: _____